

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

ANTHONY FOX,

Plaintiff,

-against-

9:05-CV-1292  
(LEK/GJD)

WILLIAM BROWN, Superintendent,  
Eastern Correctional Facility, *et al.*,

Defendants.

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**DECISION AND ORDER**

This matter comes before the Court following a Report-Recommendation filed on January 12, 2007, by the Honorable Gustave J. DiBianco, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and L.R. 72.3(c) of the Northern District of New York. Report-Rec. (Dkt. No. 21). After ten days from the service thereof, the Clerk has sent the entire file to the undersigned, including the objections by Defendants in this case, which were filed on January 17, 2007. Objections (Dkt. No. 22).

It is the duty of this Court to “make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b). “A [district] judge . . . may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” *Id.* This Court has considered the objections and has undertaken a *de novo* review of the record and has determined that the Report-Recommendation should be approved for the reasons stated therein.

Accordingly, it is hereby

**ORDERED**, that the Report-Recommendation (Dkt. No. 21) is **APPROVED** and **ADOPTED** in its **ENTIRETY**; and it is further

**ORDERED**, that Defendants' Motion to dismiss (Dkt. No. 11) is **GRANTED IN PART**, and this action is **DISMISSED IN ITS ENTIRETY** as against Defendants **BROWN, GUSMAN,** and **EAGEN**; and it is further

**ORDERED**, that Defendants' Motion to dismiss (Dkt. No. 11) is **GRANTED** as to any **STATE LAW OR REGULATORY CLAIMS**; and it is further

**ORDERED**, that Defendants' Motion to dismiss (Dkt. No. 11) is **DENIED** with respect to the **EIGHTH AMENDMENT CLAIMS ONLY** against Defendants **MILICEVIC, BHAVSAR,** and **LUCAS**, without prejudice to Defendants filing a Motion for summary judgment; and it is further

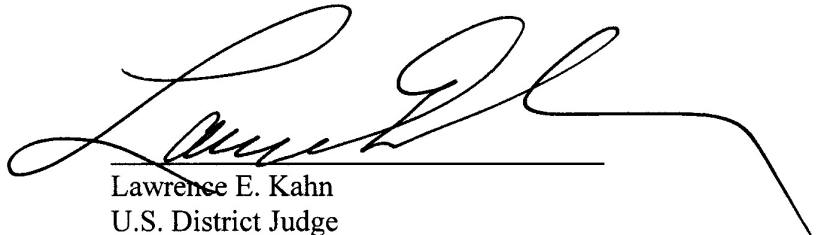
**ORDERED**, that Defendants' Motion to dismiss (Dkt. No. 11) is **DENIED** with respect to Plaintiff's claim of retaliation against Defendant **LUCAS only**; and it is further

**ORDERED**, that Defendants' Motion to dismiss (Dkt. No. 11) is **DENIED** with respect to the conspiracy claim as to Defendants **LUCAS** and **MILICEVIC**; and it is further

**ORDERED**, that the Clerk serve a copy of this Order on all parties.

**IT IS SO ORDERED.**

DATED: February 21, 2007  
Albany, New York

  
Lawrence E. Kahn  
U.S. District Judge